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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,102	09/26/2003	James A. Donovan	130139	7109
7590	04/07/2004		EXAMINER	
John S. Munday, Esquire Law Offices of John S. Munday PO Box 423 Isanti, MN 55040			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/672,102	DONOVAN, JAMES A.
	Examiner Alissa L. Hoey	Art Unit 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 September 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 17-20 is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION***Claim Objections***

1. Claims 3 and 11 are objected to because of the following informalities: in line 1-2 should "causes said causes" read "causes"? Also in line 2, should "read" be "reach"? Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5, 6, 9-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuven (5,850,636) in view of Cheney, III (5,143,048).

Reuven provides a heatable outer cap having a water impervious outer surface and sized to fit over the hair of a person (figure 3, identifiers 24, 12 and 14: column 3, lines 51-55). A liner positioned inside the outer cap, having a fibrous texture and being sized to contact the hair of the person (figures 1 and 3, identifiers 10 and 14: column 4, lines 45-67). The cloth liner is made out of a natural or synthetic material (column 3, lines 52-56). There is a heatable gel sandwiched between inner and outer layers of the cap in a flexible container (figure 3, identifiers 22, 24, 30 and 32). The heatable gel along with the rest of the cap is nuked in the microwave to heat the article (column 4, lines 1-11).

However, Reuven fails to teach the heat source comprising a frangible container containing a quantity of supercooled liquid capable of releasing a pre-determined amount of heat upon crystallization. A quantity of the crystal form of the liquid separated from the supercooled liquid and present in an amount sufficient to initiate crystallization of the quantity of supercooled liquid upon flexing the frangible container to cause the crystals to contact at least a portion of the supercooled liquid. The supercooled liquid is sodium acetate and crystallization cause the temperature of the solidifying liquid to read a temperature of 130 degrees F. The frangible container being placed proximate the middle of the article to provide heat thereto.

Cheney provides a disposable infant heel warmer having a heat source comprising a frangible container containing a quantity of supercooled liquid capable of releasing a pre-determined amount of heat upon crystallization (column 1, lines 40-56). A quantity of the crystal separated from the supercooled liquid and present in an amount sufficient to initiate crystallization of the quantity of supercooled liquid upon flexing the frangible container to cause the crystals to contact at least a portion of the supercooled liquid (column 2, lines 19-62). The supercooled liquid is sodium acetate and crystallization cause the temperature of the solidifying liquid increase (column 2, lines 50-62). The frangible container being placed proximate the middle of the article to provide heat thereto (figure 1, identifiers 1, 10, 5 and 20).

It would have been obvious to have provided the heatable cap of Reuven with the heat source of Cheney, since the disposable cap of Reuven provided

with a heat source capable of being activated without any additional means besides a user's hand to break the frangible container. Having a cap with heat capabilities without using any electricity allows the wearer to use to cap in instances where no electricity is available.

4. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuven and Cheney as applied to claims 1 and 9 above, and further in view of Lebby et al. (US 6,080,690).

Reuven and Cheney fail to teach a temperature sensitive portion on the cap to indicate the temperature of the cap after heating. Lebby et al. provides a temperature sensitive portion to indicate the temperature of a garment and a person wearing the garment (column 2, lines 20-30).

It would have been obvious to have provided the heatable cap of Reuven and Cheney with the temperature sensor of Lebby et al., since the heatable cap of Reuven and Cheney having a temperature sensor would allow the user to know when the temperature of the cap goes from pre-heated to heated so it can then be donned on the user's head.

5. Claims 7, 8, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuven and Cheney as applied to claims 1 and 9 above, and further in view of Skiba et al. (US 6,047,706).

Reuven and Cheney fail to teach the liner including a quantity of hair cleaning compound consisting of a conditioner (column 3, lines 13-17).

It would have been obvious to have provided the heatable cap of Reuven and Cheney with the cleaning compound on the liner so that the user can have all the supplies needed to deep condition their hair by just having the cap.

Allowable Subject Matter

6. Claims 17-20 are allowed.

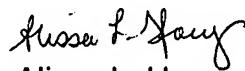
Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sapp, Miller, Andreadis, Watson, Truelock et al., Hulett et al., Murray et al., Martin, McPherson, Watanabe, Milligan et al., Karlan, Tremblay et al., Hujar et al., Leong et al., Graves, Benedict, Kohout, Gillette, Pulley, Propp, Spell, Graneto, III and Tsai are all cited to show closely related articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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